UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JIAREN WEI,	*	Case No. 13-CV-5164 (FB)
	*	
Plaintiff,	*	Brooklyn, New York
	*	July 23, 2014
v.	*	
	*	
HALAL KITCHEN 71 INC.,	*	
	*	
Defendant.	*	
	*	

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TRANSCRIPT OF CIVIL CAUSE FOR INQUEST
BEFORE THE HONORABLE CHERYL L. POLLAK
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: JIAN HANG, ESQ.
Hang & Associates, PLLC
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Suite 1003
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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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(Proceedings commenced at 3:19 p.m.)

THE CLERK: This is 13-CR-5164, *Wei v. Halal 71 Kitchen*. Civil cause for inquest. Counsel, please state your appearance for the record.

MR. HANG: Jiang Hang from Hang & Associates, PLLC representing plaintiff in this case.

THE COURT: All right. Good afternoon. You may be seated.

MR. HANG: Thank you.

THE COURT: All right. This inquest was scheduled for 3:00. It's now 3:20. The defendant has not appeared in this case and I have not gotten any phone calls from anyone representing the defendant in this case, so I guess at this point we can proceed with the inquest.

So counsel, maybe just for the record summarize the nature of the claims and the damages that you are requesting.

MR. HANG: Yes. This is a wage/hour action.

We -- our plaintiff here, Mr. Wei, is a delivery guy in the restaurant, Halal Kitchen, and they pay him about $1,900 per month as a salary, but the client here, the plaintiff here works about 70 -- 73 hours per week, so the restaurant didn't pay the client overtime.

So we are seeking overtime under FLSA and under New York Labor Law. We are also seeking (indiscernible) hours. Plaintiff works about six days a week, 73 hours in total.

Then he -- so he works for more than ten hours per day.

We also seeking the pre-trial interest reimbursement for the tools of the trade. Last one, we seek -- we're also seeking the notice and the statement, statute of damages and failure to provide notice of statement according to NYLL to the plaintiff. We're also seeking the legal expenses and attorney's fees.

THE COURT: Okay. Let me just -- why don't we start with the overtime hours.

First of all, how long did Mr. Wei work for Halal Kitchen?

MR. HANG: Yes. Your Honor, if you look at Exhibit 8, I have a summary, because Exhibit 8 is damages calculation I prepared in June 6, 2014. The first paragraph is so that --

THE COURT: Exhibit 8?

MR. HANG: Exhibit 8.

THE COURT: Eight. Okay.

MR. HANG: To the motion. It's Jiang Hang's declaration in support of motion for summary judgment.

THE COURT: Right.

MR. HANG: It's Exhibit 8.

THE COURT: Right. Okay.

MR. HANG: And plaintiff worked there from August 4th, 2012 through March 30, 2013, so a total of 34 weeks and he was paid $1,900 per month.

So I calculate his salary is, you know, 19 multiplied by 5, divided by 52 -- his regular rate is $10.96 per hour. There's a typo.

It should be $438.46 divided by 40, not divided by 10. He started at 40. So if divided by 40, the hourly rate will be $10.96 and he worked there about 73 hours per week, six days a week -- it's more than ten hours.

THE COURT: Okay. So you're seeking a spread of hours for each six-days --

MR. HANG: Yes.

THE COURT: -- each of those six days? Okay.

And since we're on that Exhibit, you have here A is overtime back pay --

MR. HANG: Yes.

THE COURT: -- of 18,433.64. We calculated it a little bit differently, but we'll put that aside for a minute.

And then you're seeking the same amount for overtime under the FLSA --

MR. HANG: Right.

THE COURT: -- and then overtime under the New York Labor Law. So explain to me why you get it three times.

MR. HANG: Yes. I think in the quarter (indiscernible) you should word it (indiscernible) because the damages are under the FLSA and the NYLL. The two different damages so it's different purposes and there's plenty of cases from the Eastern District of New York where award both legal damages.

THE COURT: But I don't -- okay. Let -- put that aside for a minute. But I don't understand the difference between overtime back pay and overtime under the FLSA.

MR. HANG: Oh. I'm sorry. That's liquidated damages. I should --

THE COURT: B should be liquidated damages?

MR. HANG: Liquidated damages. I'm sorry.

THE COURT: Okay. That's kind of what I thought you were doing.

MR. HANG: Okay. Yes. Yes.

THE COURT: Okay. All right.

MR. HANG: Same thing. C is liquidated damages overtime and then under the NYLL. It should be liquidated damages under FLSA. Liquidated damages, C, under NYLL.

THE COURT: And you have case authority that you get both? Because I've written on this before and come out the other way.

So if you have case authority that suggests you get both liquidated damages under the FLSA and under New York Labor Law and pre-judgment interest, because you're also asking for that, I'd like to see the cases.

MR. HANG: Yes. I didn't bring with me now.

THE COURT: That's okay. You can put it in a letter.

MR. HANG: Yes. I have. I have it. Yes.

THE COURT: Okay.

MR. HANG: I can put it in a letter and attach the cases.

THE COURT: Okay. That would be -- well, you don't even have to do -- just give me the case citations. We can find them.

MR. HANG: Also, I have another -- another -- just mention to the -- I have another before the -- same type of case in the Southern District, New York. They awarded to both liquidated damages and FLSA and the NYLL.

THE COURT: Okay. Well, as I said, I'll look at it.

MR. HANG: Yes. Yes.

THE COURT: Just the fact that it's in the Southern District doesn't mean it's right.

Now with respect to the expenses which you've labeled tools of the trade, explain to me what that is.

MR. HANG: This time probably we're not seeking for this because I tried to do that expenses some, you know, either credit card payment or receipts from my client and my client said I couldn't. Sometimes I just buy it in cash.

But I don't have all the documents. I said okay. We probably will not seek reimbursement expenses.

But that's under federal law, if you're working for the employer, most time applied through the (indiscernible) person. If he's working for the employer and using your own vehicle through the employee, they're supposed to pay you the gas, the car repair, but in this case, my client is just ride an electronic bicycle.

And the reason my client stopped working in March 30th, 2013 is that he had a bicycle accident. He was hit by a car and then he stopped working for this restaurant.

But his bicycle was damaged and was thrown away and I said you should have provided me if possible your sale receipts but he said, no. I couldn't find them. So --

THE COURT: Okay. So you're withdrawing the --

MR. HANG: I probably withdraw the $200 --

THE COURT: -- the part of the -- Okay. All right.

So then I guess the last issue is the failure to provide the notice. And I guess I'm a little confused as to how you got to the numbers there.

MR. HANG: Okay. New York State -- New York law says if you fail to provide proper notice, wage notice to the employee, the employer shall be fined for $50 per week up to $2,500 maximum and if you fail to issue a proper, legal wage statements to your employees, employer is supposed to be fined $100 per week up to $2,500. That's maximum.

THE COURT: Okay. But --

MR. HANG: So here -- okay.

THE COURT: Yes. But here you ask for $4,200 --

MR. HANG: Yes.

THE COURT: -- which --

MR. HANG: Okay. The total week is 34 weeks so I will modify the 50. That's a failure to provide the notice, by 34. I come up with $1,700.

THE COURT: Okay.

MR. HANG: And then failure to provide proper statements -- wage statements. That's $100 modified by -- it should be by 34 because maximum is $2,500, so I just modified by 25. That's the maximum amount -- $2,500. So you add them together -- it's 4,200.

THE COURT: Actually, it doesn't fit. Okay. I mean, I get a -- I get a different number altogether. I get $5,100. But if you are only asking for 42, then that's fine.

MR. HANG: I know. But there's a maximum. There's a maximum -- state law's a maximum for each violation of $2,500.

THE COURT: Oh, I see what you're saying. In other words --

MR. HANG: Yes.

THE COURT: Okay.

THE COURT: Yes.

THE COURT: I got it.

MR. HANG: Although I would like to have 51.

THE COURT: I got it.

MR. HANG: But I have to be honest.

THE COURT: Okay. Twenty -- so you're saying for the -- for D, section D, you're asking for 2,500 and for section B, you're asking for 1,700. Right?

MR. HANG: Let me see. Yes. Yes. Seventeen -- 1,700.

THE COURT: I got it. Okay. Now I understand what you did. All right. And then And -- I'm sorry, sir. Did you look at the attorney's fees part? I didn't look at that. Do we have all the rate information?

THE CLERK: Yes.

THE COURT: Okay. We have an affidavit?

MR. HANG: Exhibit 9 is attorneys' fees.

THE CLERK: (Inaudible.)

THE COURT: Okay. All right. As long as you -- as long as you're satisfied.

If we look through it and there's any additional information, I'll try to get back to you --

MR. HANG: Yes.

THE COURT: -- as soon as possible.

MR. HANG: Yes.

THE COURT: But I really would like the case law before I issue the R and R. Okay? If we could --

MR. HANG: It's case law on the liquidated damages, correct?

THE COURT: Under both FLSA --

MR. HANG: Oh, yes.

THE COURT: -- and -- yes.

MR. HANG: Definitely.

THE COURT: Okay?

MR. HANG: I also want to explain, attorney fee, I -- my hourly rate is 350 and the the Southern District approved that amount. I have been practiced this for almost ten years. Eight years I was associate in Epstein Becker Green. It's a labor employment law firm. I represent only employers and then I set up my own firm. I start last year started to represent both.

So I explained in my affidavits -- affirmation, sorry -- my attorney fee was 350. The Southern District approved that and they granted 350 hourly rate.

THE COURT: Did you cite the case in your papers of the Southern District?

MR. HANG: My case?

THE COURT: Yes.

MR. HANG: No, I didn't.

THE COURT: Do you want to give me the cite? Do you know what it is?

MR. HANG: Uh --

THE COURT: You can put it in the letter.

MR. HANG: -- I put it in the letter.

THE COURT: Okay.

MR. HANG: Yes.

THE COURT: All right.

MR. HANG: I put it in the letter.

THE COURT: I'll take a look at that as well.

MR. HANG: Okay.

THE COURT: All right. Anything else?

MR. HANG: No. That's it.

THE COURT: All right. As soon as I get your letter, we'll issue a report.

MR. HANG: And should I -- I should send a letter -- a faxed letter to you. I should not file, right? Right? Do I need to e-file the letter?

THE COURT: Yes. I think you need to e-file it --

MR. HANG: Oh. Okay.

THE COURT: -- and send it to the defendant.

MR. HANG: Do I have to fax -- also fax a copy to you, or just --

THE COURT: You don't have to. We'll get it off of the --

MR. HANG: Okay.

THE COURT: -- ECF.

MR. HANG: I will do it probably this week.

THE COURT: Okay. That'd be great.

MR. HANG: By the end of this week.

THE COURT: All right. Thank you very much.

MR. HANG: Thank you.

(Proceedings concluded at 3:34 p.m.)

I, CHRISTINE FIORE, Certified Electronic Court Reporter and Transcriber and court-approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

______________________________ August 18, 2014

Christine Fiore, CERT